

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

In Re:

Ark Laboratory, LLC  
a/k/a Helix Diagnostics,

Debtor In Possession.

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Case No. 23-43403-mlo  
Hon. Maria L. Oxholm  
Chapter 11

**MOTION TO COMPEL THE ASSUMPTION  
OR REJECTION OF EXECUTORY CONTRACT**

Comes now Orchard Software Corporation (“Orchard”), by counsel, and for its Motion to Compel the Assumption or Rejection of Executory Contract (“Motion”) respectfully represents as follows:

1. On April 12, 2023 (the “Petition Date”), Ark Laboratory, LLC a/k/a Helix Diagnostics (“Helix” or “Debtor”) filed its Chapter 11 petition in Case No. 23-43403.

2. Orchard develops, owns and licenses software programs that are used to operate medical laboratory equipment and to manage healthcare information.

3. One type of software program developed and licensed by Orchard is the Copia Outreach Information System (“Copia”), which is a web-based software used to store and manage healthcare information. Another software program developed and licensed by Orchard is known as the Orchard Harvest Laboratory Information System (“Harvest”), which is downloaded by customers and used to help operate medical laboratory equipment. The Copia and Harvest software packages are often used by the same customer, typically medical testing laboratories.

4. On March 13, 2020, Orchard and Helix entered into a contract pertaining to the Harvest and Copia software, as subsequently amended, is referred to herein as the “License Contract”). A copy of the License Contract is attached as **Exhibit A**. Among other provisions,

the License Contract, contingent on monthly payments (a) granted a nonexclusive license to Helix to use the Harvest and Copia software and (b) allowed Helix limited access to the Harvest source code.

5. The License Contract is an executory contracts under 11 U.S.C. § 365.

6. Pursuant to Section 365(d)(2) of the Bankruptcy Code, 11 U.S.C.A. § 365(d)(2), upon request of any party to an executory contract, a court may order the trustee (or debtor in possession) to determine within a specified period of time whether to assume or reject an executory contract.

7. The Debtor has made no post-petition payments to Orchard.

8. As of the date of filing of this Motion, the Debtor has neither assumed nor rejected the License Contract.

9. Orchard is being greatly prejudiced by the Debtor's failure to assume or reject the License Contract because the Debtor will continue to use Orchard's property and services under the License Contract without payment to Orchard.

10. Because Orchard is being greatly prejudiced by the Debtor's continued use of Orchard's property and services pursuant to the License Contract without properly assuming or rejecting the License Contract and because this Court may set a specified period of time in which the Debtor may assume or reject the License Contract, this Court should set a date of 15 days from the date of an Order compelling the Debtor to assume or reject the License Contract as the specified period of time within which the Debtor must assume or reject the License Contract.

11. The Harvest software program and the Copia software program are protected under federal copyright law. Under applicable copyright law, the License Contract is assignable without Orchard's consent. *See, e.g., In re Golden Books Family Entm't, Inc.*, 269 B.R. 300, 309 (Bankr.

D. Del. 2001) (“Under copyright law, ‘a nonexclusive licensee ... has only a personal and not a property interest in the [intellectual property],’ which ‘cannot be assigned unless the [intellectual property] owner authorizes the assignment.’”).

12. Pursuant to the holdings in *In re Sunterra Corp.*, 361 F.3d 257 (4<sup>th</sup> Cir. 2004) and *In re Kazi Foods of Michigan, Inc.*, 473 B.R. 887 (Bankr. E.D. Mich. 2011), the License Contract is not assumable or assignable by the Debtor without Orchard’s explicit consent. Orchard has not consented to the assumption or assignment of the License Contract.

WHEREFORE, Orchard Software Corporation respectfully requests that this Court enter an Order compelling the Debtor to assume or reject the License Contract within 15 days from the date of such Order, and grant all necessary and proper relief.

Respectfully submitted,

/s/ David J. Jurkiewicz

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Dated: May 26, 2023

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**CERTIFICATE OF SERVICE**

David J. Jurkiewicz certifies that, on May 26, 2023, he electronically filed Creditor, Orchard Software Corporation's *Motion to Compel the Assumption or Rejection of Executory Contract* as well as this *Certificate of Service*, using the ECF system which will send electronic service notification of such filing to all counsel registered electronically.

Respectfully submitted,

/s/ David J. Jurkiewicz

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Dated: May 26, 2023